

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

MICHAEL R. TURNER,

Petitioner,

-vs-

STUART HUDSON, Warden,

Respondent.

:

Case No. 2:07-cv-595

:

District Judge Timothy S. Black
Magistrate Judge Michael R. Merz

:

REPORT AND RECOMMENDATION

This capital habeas case is before the Court on Petitioner's Motion for Leave to File a Fourth Amended Petition without Lethal Injection Grounds (ECF No. 260). Having read the Motion, the Warden's Response (ECF No. 261), and Turner's Reply (ECF No. 262), the Magistrate Judge humbly confesses error and respectfully recommends that the District Judge correct that error by entering, *nunc pro tunc* for October 29, 2015, an order identical to ECF No. 254 except that the substituted last paragraph will read

Accordingly, it is hereby ORDERED that the lethal injection grounds for relief in Petitioner's Third Amended Petition (ECF No. 244) be dismissed without prejudice to the filing of Petitioner's proposed Fourth Amended Petition in the event the Court sustains Turner's Appeal (ECF No. 263) from the Magistrate Judge's Order denying leave to file the Fourth Amended Petition.

The Magistrate Judge understands that this solution to the present difficulty is acceptable

to both parties in the case. Nevertheless, since what is recommended is an amendment to a District Judge's Order, the Magistrate Judge files this as a Report and Recommendation.

Turner's Motion for Leave to File a Fourth Amended Petition without Lethal Injection Grounds is DENIED.

February 25, 2016.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).